



## City of Oak Park Heights

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January 25, 2006

TO: Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington D.C. 20554

Also via email: <http://www.fcc.gov/cgb/ecfs>

RE: -MB Docket No. 05-311 - Comments In the Matter of Implementation of Section 631 (a)(1)  
of the Cable Communications Policy Act of 1984 as amended by the  
Cable Television Consumer Protection Act of 1992

Dear Commission Members,

Attached you will find a copy of the comments provided to your offices by the Central St. Croix Valley Joint Cable Commission regarding the above matter. Please be advised that the City of Oak Park Heights, MN does concur and support these positions as taken by the Central St. Croix Valley Joint Cable Commission. We further request that the City's support be noted in the official record on this matter.

Please let us know if you have any questions.

Sincerely,

  
Eric Johnson  
City Administrator

Cc: Senator Mark Dayton - Minnesota  
Senator Norm Coleman - Minnesota  
Rep. Mark Kennedy - Minnesota 6<sup>th</sup> District  
City Council Members  
Kathy Cinnamon, Central St. Croix Valley Joint Cable Commission

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 )  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

MB Docket No. 05-311

**COMMENTS OF the Central St. Croix Valley Joint Cable Communications Commission,  
representing the Cities of Stillwater, Oak Park Heights, Bayport and the townships of  
Stillwater and Baytown, all in the state of Minnesota.**

These Comments are filed by the Central St. Croix Valley Joint Cable Communications Commission in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the Central St. Croix Valley Joint Cable Communications Commission believes that local governments/Cable Commissions can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

The Central St. Croix Valley Joint Cable Communications Commission is a joint powers entity representing the Cities of Stillwater, Oak Park Heights, Bayport, Baytown Township and Stillwater Township, all located in Minnesota, with a population of approximately 30,000 for the area. Our franchised cable provider is Comcast. Our community has negotiated cable franchises since 1984. We are in the midst of our second franchise. Cable franchises are 15 years in duration.

**Our Current Franchise**

Our current franchise began on June 8, 1999 and expires on June 8, 2014. (to see complete franchise agreement see Appendix A) Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

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Our franchise requires the cable operator to pay a franchise fee to the Central St. Croix Valley Joint Cable Communications Commission in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channel devoted to public access; 1 channel devoted to educational access; and 1 channel devoted to government access. We also have 1 channel which is devoted to church/inspirational programming.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: The cable company must ensure that the signal quality of all such channels shall meet all applicable technical standards. The cable company provided the Central St. Croix Valley Cable Commission an equipment grant in the amount of \$125,000 initially; a second equipment grant in the amount of \$125,000 6 months later and then on the seventh year of the franchise a third equipment grant will be due in the amount of \$50,000. The cable company provided 5 new modulators to replace the old ones at the beginning of our current franchise.

In addition to the equipment grants, we negotiated a PEG fee which is collected by the cable company via subscribers' bills. These fees are paid to the Central St. Croix Valley Cable Commission on a quarterly basis as support for our public access channels and operations. Initially the amount was \$1.25 per subscriber per month. The Commission had the option to raise the PEG fee to \$1.40 per subscriber per month commencing no earlier than the first anniversary of the effective date of the franchise (June 9, 2000). After the sixth anniversary date of the effective date of the franchise the PEG fee may be increased (if the Cable Commission wishes) once per year in an amount up to an additional 3.5% per year or the percentage increase in the Consumer Price Index for the prior year, whichever is less.

Our franchise contains the following institutional network ("I-Net") requirements: (We have had an institutional network from the beginning of the 1<sup>st</sup> franchise.) We currently have 13 sites on the institutional network, which includes some schools, our City Halls, fire departments, Washington County Government Center, School District offices, some alternative schools, 2 churches, a recreational center and the historic courthouse. Performance standards for the I-Net are included in our franchise and maintenance and repair issues are defined.

Upon franchise renewal, the **subscriber network** was to be enhanced from 450 MHz, 64 channel system to a 750 MHz system offering more channels, higher signal quality, more reliability and more feature upon completion. The **institutional network** was extended to a few new locations and upgraded by introduction of four count fiber, resulting in a reduction of most

### **Cable Franchising in our Community – Page 3**

amplifier cascades to no more than 13 amplifiers and migrating the network to a hybrid fiber-coax system. The cable company granted us 21 six MHz analog channels downstream and 12 six MHz analog channels upstream for video and data uses. Additional sites can be connected to the network on a cost-sharing basis, with the cable company providing the first 500 feet of construction free of charge. There are provisions for interconnecting our institutional network with adjacent networks as well. There are no provisions for special funds.

We use our I-Net facilities in the following ways: The Central St. Croix Valley Cable Commission uses the institutional network in order to provide live coverage of local city council meetings, county board meetings, school board meetings and an occasional special event in the community. The local libraries utilize their institutional network connection for data purposes (at least that is my understanding) and to link with other libraries in the County.

Regarding emergency alerts requirements: Our current franchise does not address emergency alerts but I know that our first franchise did. I believe that the County currently takes care of emergency alerts in our community. I have seen alerts on television before and it tells viewers what channel to turn to for information.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms agreed upon in the franchise: The cable company shall maintain an office in at least one of the member Cities which shall be open during normal business hours where payments can be brought and where equipment can be picked up or dropped off. The cable company must also supply a drop box in each of our Cities for purposes of depositing payments. The cable commission's phone number is on subscriber's bills for any problems that seem to be unable to be resolved with the cable company; therefore the Cable Commission assists our subscribers with any customer service issues if needed. In the event that the local office closes, the cable company has to be willing to pick up defective equipment or equipment no longer wanted, by appointment with the subscriber, at no charge. The Cable Company is currently doing this.

Because we are in our second franchise period, I have chosen not to discuss the original construction phase, but rather our upgrade which occurred shortly after our renewal in 1999. Our franchise contains the following language for the upgrade of the subscriber network: The system upgrade shall give us a capacity of at least 750 MHz and will provide a minimum of up to 80 video programmed channels. A hybrid fiber-coaxial architecture which incorporates fiber optic cables from our headend to nodes located throughout the community will serve approximately 500 homes per node. The upgrade will also provide the capability to transmit return signals upstream in the 5-40 MHz spectrum. The construction shall be completed on or before December 31, 2000 (it was actually completed a couple of months earlier!).

Our franchise requires that the cable operator currently provide service to the following areas of our community: The franchise is granted for the corporate boundaries of our member

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cities. The cable company will extend its trunk and distribution system to provide cable service to subscribers where the density is 35 or more dwelling units per mile in areas passed by overhead cable and 50 or more dwelling units per mile in areas passed by underground cable. When the density requirement is not met, the cable company shall cover the first \$1,000 of installation cost, with the remaining being paid by the customer or developer.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: That was discussed 2 paragraphs earlier. We are able to get the newest technologies, which includes the high speed internet and telephone service over the subscriber network. Digital receivers have replaced the analog boxes and enable the subscriber to get more services. More and more new services are being offered by the Cable Company (Comcast).

With regards to a level playing field for possible competitive providers, the franchise does indicate that the franchise is not exclusive and that it does not, explicitly or implicitly, preclude issuance of other franchises or similar authorization to operate Cable Systems within a Member City. The Grantor shall not authorize or permit another party to construct, operate or maintain a Cable System on material terms and conditions which, taken as a whole, are not more favorable or less burdensome than those that are applied to the Grantee. (see entire franchise language in Appendix A, page 5) Our cable attorney came up with some policies/guidelines concerning this issue and procedures to follow when we are approached by competitive providers. We would definitely give another provider the same opportunities as the current cable provider. We have been approached only once for a brief overview. Nothing else has happened. We are a small community and we haven't been approached the same as the large franchise areas have been. We would welcome competitive providers but need for them to go through our local governments and cable commission and follow the same procedures as the current cable company if our rights-of-ways are used to deliver their services.

Our franchise contains the following insurance and bonding requirements: Initially a performance bond of \$100,000 was issued; it was reduced to \$10,000 once the system was upgraded. The cable company has also issued a security/performance sum of \$5,000 which is held by the Cable Commission to use in the event that a franchise violation occurs and is not corrected in a timely basis.

The Cable Company carries an insurance policy of \$1,000,000 for personal injury or death of any one person and \$2,000,000 for personal injury or death of two or more persons. There is also an insurance policy of \$500,000 for property damage to any one person and \$2,000,000 for property damage resulting from any one act or occurrence.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. In our franchise there is no mention of fees

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for a permit. What the franchise does have is rules that say that the Cable Company shall adhere to all state & local laws, building & zoning codes and that the location, construction, installation and operation or maintenance of the system is done with consideration of the aesthetics of the property. Repairs to the right-of-ways and property must be done and fully restored to the same condition as prevailed prior to the provider's work. There are other considerations mentioned in the franchise as well, such as 1) Conditions of right-of-ways use, 2) Undergrounding of cable, installation of facilities and safety requirements. The franchise also states that usage of the rights-of-ways by providers shall not be exclusive and that it does not explicitly or implicitly, preclude the issuance of other franchises or similar authorization to operate within a member City.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The Cable Commission office gets calls of complaint from residents and government offices if there are problems with services (which sometimes gets into the area of franchise compliance) and as time goes by, the Commission and/or the Administrator looks into the franchise on different issues and asks for reports as needed. The Cable Commission reserves the right for periodic evaluation sessions upon written request. Customer service is handled at both the Cable Company and Cable Commission levels.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government/cable commission (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Our franchise states that if any state or federal regulation results in a conflict with our franchise agreements that either party (Commission/Cable Company) will notify the other and that both entities must confirm to state and federal laws regarding cable communications not later than one year after they become effective.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. The Cable Commission is a joint powers entity so it is this Commission who deals with franchising and franchise compliance. We held a public hearing before the final draft of the new franchise, we held a public hearing when Comcast was going to be the new

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cable company and we ask a representative of the Cable Company to be present at our meetings in order to keep in touch with each other about developments.

### **Competitive Cable Systems**

Our community was approached once by a company from Denver called "Wide Open West" but the provider chose not to enter into any formal discussions. This was in the spring of 2000 and a representative from the Wide Open West came and visited with the Cable Commission chairperson and myself (administrator) just to introduce their company. We didn't get into franchising procedures at all. There have been no other contacts with Wide Open West or anyone else.

### **Conclusions**

The local cable franchising process functions well for the Central St. Croix Valley Joint Cable Communications Commission (representing the Cities of Stillwater, Bayport, Oak Park Heights, Baytown Township and Stillwater Township). As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

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The Central St. Croix Valley Joint Cable Communications Commission therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,



Jack Doerr, Chairman  
Central St. Croix Valley Joint Cable  
Communications Commission  
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JD:kc

Comments Prepared in January, 2006 by:  
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cc: 4 additional copies of comments to the FCC  
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John Norton of NATOA  
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City of Oak Park Heights  
City of Bayport  
Baytown Township Board  
Stillwater Township Board  
Central St. Croix Valley Cable Commission Members